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GROUP 2100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION FOR REISSUE OF U.S. PATENT 4,823,070

Date of Issue

Inventor

April 18, 1989

, Carl T. Nelson

- Title : SWITCHING VOLTAGE REGULATOR CIRCUIT

Assignee : Linear Technology Corporation

Reissue Serial No. : 683,549

Reissue Filing Date : April 10, 1991

Examiner : K. Peckman, Art Unit 2102

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GROUP 2100 DECLARATION OF DANIEL W. WARK

I, DANIEL W. WARK, a citizen of the United States residing at 320 Britto Terrace, Fremont, California 94539, declare that:

- 1. I am presently employed by Linear Technology
 Corporation (hereafter "LTC") of Milpitas, California. I have
 been employed by LTC since May 1983. My current position at LTC
 is Director of Corporate Services. I have held this position
 since September 1992.
- 2. From May 1983 until July 1989, I was Manager of LTC's Production Control Group. The Production Control Group schedules production in LTC's factory. The Production Control Group also schedules factory commitment dates in response to orders for LTC products received by LTC from its distributors and

sales representatives. Based on my experience as Manager of the Production Control Group, I am familiar with LTC's procedures and documentation for handling such orders in 1985.

- In 1985, LTC's distributors and sales representatives typically sent orders to LTC by fax or telex. These orders were sometimes modified by follow-up requests made by telephone. An order normally specified one or more devices and a requested quantity and delivery date for each specified device. The faxes and telexes were transmitted to LTC's Customer Service Group, which in turn placed the faxes and telexes into a tray to await review by LTC's Production Control Group. I or another person in the Production Control Group reviewed each fax or telex in the tray. If the order was for a device that was within LTC's product line at the time and being offered for sale by LTC, it was scheduled for production and a hand-written annotation was made on the fax or telex indicating a date by which the factory would have the requested quantity of the device ready for delivery. We referred to this date as the "factory commitment date."
 - 4. After the Production Control Group annotated a fax or telex, it was then returned to the Customer Service Group for documentation. The Customer Service Group documented orders from distributors and sales representatives by entering the orders into an order management database. In 1985, LTC did not have its own computerized system for order management and accounts receivable. Instead, it used an off-site database service

provided by Smith, Dennis & Gaylord ("SD&G") on a time-shared basis to document all orders, accounts receivable and finished goods inventory.

- 5. Each order entered into the SD&G time-shared database was assigned a sales order number. The sales order number was formatted to indicate the month and year in which the corresponding order was entered into the database. The sales order numbers were also serialized, such that a sales order number indicated not only the month and year in which a corresponding order was entered into the the SD&G time-shared database, but also whether the order was the first, second, third, etc. order entered within a particular month.
 - 6. Once entered into the SD&G time-shared database, orders remained "open" pending completion by LTC (e.g., by shipping the requested products) or some other terminating event. LTC's order entry system allowed LTC's Customer Service Group to add devices to an open order, which they often did in response to requests from distributors and sales representatives. In such cases, the added devices would become associated in the SD&G time-shared database with a sales order number that had been assigned earlier to the open order when it was first entered.
 - 7. In January of this year, I was asked by Robert Scott, LTC's Marketing Manager, to visit a warehouse at which LTC has stored some of its old sales and marketing materials and to search through those materials for any records of orders received by LTC in 1984-1986 from its distributors or sales

representatives for certain LTC devices. I understood from Mr. Scott that the search request was in connection with an investigation being conducted by LTC relating to pending or anticipated litigation.

- During my search at the warehouse, I discovered a bound computer printout entitled "SALES ORDER REPORT." The printout is dated

 December 20, 1985 and it appears to contain a listing of information from the SD&G time-shared database which identifies all orders entered into the database during the period May 1983 through December 1985. In the report the orders are sorted by sales order number. I gave this document to Mr. Scott. Upon information and belief, during a review of the document by Mr. Scott it was discovered that the report included entries for devices in the LT-1070 device family and that some of these entries were associated with sales order numbers having dates prior to November 18, 1985.
 - 9. I was not looking for information concerning the LT-1070 device family when I first searched the warehouse. I did not know, prior to finding the Sales Order Report, that the report existed.
 - 10. From the Sales Order Report, it appears that requests for LT-1070 devices were entered into the database under sales order numbers having initial entry dates prior to November 18, 1985 as follows:

S/O NO	SO DT	CUST ABBREV NAME	PART NUMBER	REQ <u>DT</u>	REQ <u>QTY</u>	UNSHPD
5K0236	10/24/85	JERMYN	LT1070CT	11/19/85	50	50
5K0326	10/31/85	MICROLOG	LT1070CT	11/19/85	50	50
5L0039	11/5/86	NEYE	LT1070CT	11/19/85	50	50
5L0074	11/11/85	SVENSK	LT1070CHVT	11/21/85	100	100
5L0074	11/11/85	SVENSK	LT1070CK	11/19/85	200	200
5L0074	11/11/85	SVENSK	LT1070CT	11/19/85	300	300
5L0085	11/12/85	BACHER	LT1070CT	11/19/85	100	100
5L0121	11/14/85	AMITRON	LT1070CK	11/19/85	200	200

Copies of the pages from the Sales Order Report containing the above entries (which include more information than is listed above) are attached hereto as Exhibit A.

Production Control Group, and my familiarity with the SD&G time-shared database, I understand the following from the Sales Order Report. "S/O NO" is the sales order number, which gives the year and month of the order and its serial number within that period (e.g., in "5K0236," "5" indicates 1985; "K," the 11th letter of the alphabet, indicates November, the 11th month; and "236" indicates that it is the 236th order entered in November 1985). The "SO DT" is the date that the LTC Customer Service Group made its initial entry into the database with respect to the corresponding sales order number (it does not, however, indicate that the database entries for LT-1070 devices were made on that date, as I explain further below). The "CUST ABBREV NAME"

identifies the distributor or sales representative that initiated the order. "PART NUMBER" is the particular LTC device that was ordered, including package type. "REQ DT" is the date of delivery requested in the order. "REQ QTY" is the number of devices ordered. "UNSHPD" is the number of requested devices that had not been shipped in response to the order as of the date of the report.

- 12. All of the entries in the Sales Order Report for LT-1070 devices that are associated with sales order numbers having initial entry dates prior to November 18, 1985 (i.e. the entires identified in ¶ 10 above) were from foreign distributors (Jermyn, France; Microlog, England; Neye, Germany; Svensk, Sweden; Bacher, Austria; Amitron, Spain). Three of the entries were associated with a single order (#5L0074) from Svensk. The Sales Order Report shows that no LT-1070 parts were shipped in response to any of these requests prior to December 20, 1985, the date the Sales Order Report was generated.
- and was not available for sale, prior to November 18, 1985. A new device became part of LTC's product line and could be offered for sale only after a Released Product Listing ("RPL") Form for that device was issued. Issued RPL Forms were approved by various department managers, including me. An RPL Form for the LT-1070 was first issued on November 18, 1985. It is now, and it was in 1985, company policy at LTC that a device could not be sold or offered for sale, and no order for the device could be

solicited, booked or acknowledged, prior to issuance of an RPL Form for that device. The RPL Form for the LT-1070 confirms that prior to November 18, 1985 the LT-1070 was not a part of LTC's product line, the LT-1070 was not authorized to and could not be sold or offered for sale as an LTC product, and orders for the LT-1070 were not authorized to and could not be solicited, booked or acknowledged. A copy of the RPL Form for the LT-1070 is attached hereto as Exhibit B.

- 14. In view of LTC's policies and the RPL Form for the LT-1070, the requests for the LT-1070 identified in ¶ 10 above could not have been booked on the dates of the sales order numbers with which they are associated. They could only have been booked after November 18, 1985, the date the RPL Form for the LT-1070 issued. As I discuss below, LTC's warehouse contained further documentation showing that, in fact, the LT-1070 requests were booked as orders on the dates indicated in the sales report under "REQ DT." As can be seen from the Sales Order Report and the information set forth in ¶ 10 above, these dates are November 19, 1985 and November 21, 1985.
- 15. After it was discovered that the Sales Order Report showed entries for the LT-1070 associated with sales order numbers having dates prior to November 18, 1985, Mr. Scott asked me to return to the warehouse and to search for any other documents concerning these requests for the LT-1070. I visited the warehouse again on February 16, 1994. On this second occasion I located another bound computer printout entitled

"MONTHLY INVOICE REGISTER." This document included monthly reports of invoices issued by LTC during the fiscal year ending June 29, 1986. I also located a bound computer printout entitled "DETAIL SALES REPORT BY SALES CODE," which was a report of invoices issued during a period ending February 23, 1986, and a bound computer printout entitled "BOOKINGS BY CUSTOMER, 10/28/85 THRU 11/24/85."

- 16. I located references to the above-identified LT1070 requests in each of these reports. The invoice reports show
 that LT-1070 products first began shipping against orders in
 January and February, 1986. The bookings report, which is a
 compilation of monthly reports, lists by distributor/sales
 representative the orders that were booked in each month for that
 distributor or sales representative. Entries corresponding to
 the LT-1070 requests identified in ¶ 10 above all appear in the
 monthly report covering the period October 28, 1985 through
 November 24, 1985. Each entry has a "TRANSACTION DATE" identical
 with the "REQ DT" that appears in the Sales Order Report for the
 corresponding request. The transaction date is the date the
 request was booked by LTC as an order. Copies of the pages from
 the bookings report that refer to the LT-1070 requests are
 attached hereto as Exhibit C.
- 17. It is clear from the bookings report that the LT1070 orders referred to above were not booked on the sales order
 dates shown in the Sales Order Report. The LT-1070 requests were
 booked by adding the requests to previously entered orders for

other LTC products, but only after the RPL for the LT-1070 issued. From the Sales Order Report it can be seen that each LT-1070 entry is associated with a sales order number which is also associated with at least one other LTC product. For example, sales order #5K0236 (Jermyn) includes an order for LTC's LM117HVK/883 product, in a quantity of 150.

- bookings report for the period September 30, 1985 through October 26, 1985 containing an entry for sales order #5K0236. This entry shows that the order for LTC's LM117HVK/883 product was booked on October 24, 1985, the date of the sales order number #5K0236 shown in the Sales Order Report. Consistent with the bookings shown in the bookings report October 28, 1985 through November 24, 1985, the LT-1070 entry associated with sales order #5K0236 does not appear in this earlier bookings report. Had Jermyn's LT-1070 request been booked on the sales order date of October 24, 1985 shown in the Sales Order Report, it would have appeared in the bookings report for the period September 30, 1985 through October 26, 1985 along with the order for LTC's LM117HVK/883 product.
 - 19. For the above-stated reasons, LTC's records including the documents I located in the warehouse confirm that prior to November 18, 1985 the LT-1070 was not being sold or offered for sale by LTC.

I hereby declare that all statements made herein of my

own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application in connection with which this declaration is being submitted to the Patent and Trademark Office, or any patent issued thereon.

Dated: June 1,1994

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